IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU

A20020005369

UNDER	Section 251 and 306,Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Parengarenga B3 Residue
BETWEEN	BARRY MURRAY Applicant

A20030003449

UNDER	Section 289, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	PAKOHU 2B2AJ Block
AND BETWEEN	PAUL ROBSON NORMAN Applicant

and others – see over

Hearing: 13 May 2013
3 July 2013
20 November 2013
9 December 2013
6 June 2014 (Teleconference)
24 July 2014 (Teleconference)
21 November 2014
(Heard at Kaitaia and Whangarei)

Judgment: 6 April 2016

RESERVED JUDGMENT (PRELIMINARY DETERMINATION)
OF JUDGE D J AMBLER

A20120012483

UNDER	Section 281, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	PARENGARENGA A and PARENGARENGA B3 (PARENGARENGA A INCORPORATION)
AND BETWEEN	DEPUTY REGISTRAR Applicant

A20130004223

UNDER	Section 281, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	PROPRIETORS OF MURIWHENUA (MURIWHENUA INCORPORATION)
AND BETWEEN	DEPUTY REGISTRAR Applicant

A20130010257

UNDER	Section 67, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	NGATEKAWA BLOCK AND PARENGARENGA A BLOCK
AND BETWEEN	HEEKI MOSES Applicant

Table of Contents

Introduction

[1] This reserved judgment (by way of a preliminary determination) addresses five separate applications concerning the Parengarenga A Incorporation ("PI") and Muriwhenua Incorporation ("MI"), and blocks of land related to those two incorporations. The two incorporations are neighbours on the Parengarenga Harbour. The issues raised by the applications are complex, though they are not necessarily disputed by the parties, and in essence involve correcting errors in the Incorporations' share registers and some of the Court's title orders and records. The complexity lies in ensuring that the correct method of remedying the errors is adopted, and in the correct sequence.

[2] The applications concern the following matters:

(a) the share registers of the PI and MI;

(b) the beneficial ownership of the Ngatekawa block, which was partitioned from the Parengarenga B3 Residue block, administered by the PI, on 4 November 1998;

(c) the conditional partition of the former Pakohu 2B2AV Part block (known as "Te Mingi") from the Parengarenga B3 Residue block administered by the PI, which is then to be vested in the MI, on 17 September 2004; and

(d) the conditional partition of the former Pakohu 2B2AJ block out of the Te Hapua 42 Block, administered by the MI, on 9 December 2013.

[3] In addition to these specific matters, the proceedings have revealed anomalies with the land titles. In particular, Lot 1 DP 103374, which is vested in the PI, is Māori freehold land but the title issued on 30 January 1987 (NA56D/1466) does not disclose that status; and Parengarenga B3 Residue, which is also vested in the PI, comprises the former Parengarenga B3B and B3C blocks, yet LINZ does not have a title for Parengarenga B3 Residue (only for the former Part Parengarenga B3C). I will address these anomalies as part of these proceedings.

[4] As I have said, there is no real dispute between the parties and they seek the same outcome: the correction of the share registers of the two incorporations; for the PI to end up with a single share register; for the Ngatekawa block to show the correct owners and beneficial interests; for the Te Mingi block, to remove the correct shareholders and shares from the PI, and add them and the land to the MI in the correct proportions; for the Pakohu 2B2AJ block to have the correct owners and beneficial ownership; and for the land titles themselves to be correct.

[5] The applications were last before me on 21 November 2014.[1] I had hoped to be in a position to address them well before now however, unfortunately other work commitments have taken priority and I have only now found the time to reacquaint myself with the detail of the applications and to issue this preliminary determination. I regret the delay.

[6] This decision is released as a "preliminary determination" as I wish to set out my assessment of the situation and approach to remedying the errors, and provide the parties with an opportunity to comment before any formal orders or directions are made. This is particularly important as the sequence in which the remedial steps are taken will be critical to achieving the correct outcome.

The applications

[7] I briefly summarise the applications and the background that gives rise to them.

A20020005369 – Partition of Te Mingi block from Parengarenga B3 Residue

[8] On 13 September 2002 Barry Murray applied to partition the former Pakohu 2B2AV Part block (known as Te Mingi) from the Parengarenga B3 Residue block which is administered by the PI and to vest that land in the MI. The two incorporations and their respective shareholders had agreed some time ago that it was more appropriate that Te Mingi and its associated shareholders be under the administration of the MI. In fact, the related Pakohu 2B2AV Residue block was originally included in the Te Hapua 42 block on 4 March 1965,[2] following which the block was then vested in the Te Hapua 42

[1] 109 Taitokerau MB 146-195 (109 TTK 146-195).
[2] 3 Kaitaia MB 29-32 (3 KT 29-32).

Incorporation (which later became the MI). Thus, Te Mingi has long been associated with the MI's shareholders.

[9] On 17 September 2004 Judge Spencer made orders under ss 251 and 306 of the Te Ture Whenua Māori Act 1993 ("1993 Act") partitioning the former Pakohu 2B2AV Part block from Parengarenga B3 Residue, giving it the name Te Mingi and vesting it in the MI.[3] The orders were conditional on survey and have never been promulgated. I was told by the parties that they rely on computed survey plan ML 430008 for the title to be completed (which also shows the Ngatekawa block). As the present applications demonstrate, the orders are also dependent upon the PI's share register being correct, and the correct amount of shares being converted and transferred to the MI's share register.

A20030003449 – partition of former Pakohu 2B2AJ block from Te Hapua 42

[10] On 29 May 2003 Paul Norman applied to partition the former Pakohu 2B2AJ block from Te Hapua 42, which is administered by the MI. The purpose of the application was to remove a whānau block from the incorporation and vest it in the owners associated with it. On 21 June 2005 Judge Spencer made a partition order conditional on certain steps being carried out within one year.[4] Those steps were not carried out and the application languished for some years.

[11] The application was eventually heard again by Deputy Chief Judge Fox on 9 December 2013 when she made a partition order (and other orders) conditional on valuations and plans being filed within two months.[5] The effect of the order was to remove the land from the administration of the MI, vest it in the Te Kokota Whānau Trust and cancel that trust's shares in the MI (said to be 48.5663 shares). Those conditions have yet to be satisfied. Following the Court's order of 9 December 2013 two matters arose.

[12] First, by way of a memorandum of 29 January 2014, the Deputy Registrar brought to the attention of Deputy Chief Judge Fox that the Te Kokota Whānau Trust did not in fact own 48.5663 shares in the MI but rather 14.1363 shares. However, some of the beneficiaries of the trust individually hold shares in the incorporation in the sum of 34.43

[3] 23 Kaitaia MB 183-184 (23 KT 183-184).
[4] 23 Kaitaia MB 263-264 (23 KT 263-264).
[5] 71 Taitokerau MB 121-132 (71 TTK 121-132).

shares, bringing the total shares to 48.5663 shares. By direction of 31 January 2014 Deputy Chief Judge Fox indicated that a rehearing may be needed.

[13] Second, by way of an email of 6 August 2014, Kahuipani Petera, the former secretary of the MI, wrote to the Court raising several issues regarding the orders, being whether the Te Kokota Whānau Trust should be an ahu whenua trust, the boundaries of Pakohu 2B2AJ, the deduction of shares from the MI and responsibility for rates.

[14] A rehearing has yet to take place. During a teleconference on 24 July 2014 regarding the other applications I discussed this application with the parties and the fact that its completion may be affected by the other applications.[6]

A20120012483 and A20130004223 – applications to require officers of Parengarenga A Incorporation and Muriwhenua Incorporation to explain non-compliance with statutory requirements

[15] On 24 September 2012 and 8 May 2013 the Deputy Registrar of the Māori Land Court at Whangarei brought separate applications under s 281 of the 1993 Act for the officers of the PI and MI respectively to explain non-compliance with the statutory requirements of the Act. The reason for the applications was that these incorporations, like other incorporations around the country, had not complied with their statutory obligations in maintaining correct share registers and having those share registers audited (pursuant to ss 277(6) and 281(1)(g) of the 1993 Act).

[16] As it transpired, the two incorporations had for some time been working independently of the Court to reconcile their respective share registers and had identified a range of problems with the registers as a result of past actions of the Crown and the Court. I explain those matters in more detail below.

A20130010257 – Ngatekawa block

[17] On 18 November 2013 Heeki Moses filed an application under s 67 of the 1993 Act for a judicial conference to examine issues in relation to the partition of the Ngatekawa block from Parengarenga B3 Residue on 4 November 1998. The problems with the Ngatekawa partition had in fact been raised at the first hearing of the two s 281

[6] 84 Taitokerau MB 122-123 (84 TTK 122-123).

applications on 3 July 2013.[7] At the conclusion of that hearing I directed Heeki Moses' daughter, Mali Moses, to file an application under s 67 to bring the issues to the attention of the Court so that they could be dealt with in conjunction with the other applications.

[18] At the subsequent hearing on 20 November 2013 I discussed the application with Ms Moses and indicated that, in light of the issues raised, the application would need to be amended to an application under s 45 of the 1993 Act to the Chief Judge to correct errors in relation to the Ngatekawa partition orders and related orders.[8] The application has yet to be amended in that manner, and the primary role of this decision in that regard is to frame the issues to be addressed by the s 45 application.

The progress of the proceedings

[19] My involvement in these proceedings arose out of the Deputy Registrar's two s 281 applications which were first heard in Kaitaia on 3 July 2013. By the time of the second hearing on 20 November 2013 the outstanding Te Mingi partition application and Heeki Moses's 67 application concerning Ngatekawa had also been referred to me. I subsequently conducted teleconferences with the parties to arrange for these four applications to be set down for a sitting in Whangarei on 21 November 2014 together with an entirely separate application concerning problems with the Otakanini Incorporation's share register.

[20] The 21 November 2014 sitting comprised a meeting, judicial conference and hearing. We commenced with a hui amongst the three incorporations, that is, the PI, the MI and the Otakanini Incorporation.[9] We discussed general issues concerning the steps needed to be taken to reconcile and complete incorporation share registers that were incorrect or incomplete. As it transpired, the issues for the PI and MI are quite different to those of the Otakanini Incorporation, which has significant share register problems as a result of incomplete internal records. The issues for the PI and MI are not so much a result of incomplete internal records, but the effect of Crown and Court actions regarding their land titles and share registers.

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[7] 65 Taitokerau MB 274-294 (65 TTK 274-294).
[8] 70 Taitokerau MB 127-143 (70 TTK 127-143).
[9] 109 Taitokerau MB 280-283 (109 TTK 280-283).

[21] The main part of the hearing on 21 November 2014 concerned the four applications mentioned together with the Pakohu 2B2AJ partition application.[10] That application was included in the hearing because the partition orders had not been finalised and because similar titles and share register issues appeared to arise.

[22] As noted at the outset, the issues concerning the titles and share registers are complex. I was assisted greatly by three reports and associated bodies of research.

[23] First, on 1 November 2011 Kahuipani Petera, the then secretary of the MI, filed with the Court a four page report with supporting documents and a CD relating to the outstanding Te Mingi partition. The case manager, Reona Parkin, subsequently labelled this set of documents "Set A". At the hearing on 20 November 2013 Ms Petera advised that the MI was still in the process of reconciling its share register.[11]

[24] Second, Anaru Rieper had been engaged by the PI to work on the reconciliation of the PI's share registers. He provided the Court with an initial response on 3 July 2013 setting out some of the issues concerning the share register and the Te Mingi partition. Further, in October 2013 Mr Rieper and Mali Moses compiled calculations in relation to the Ngatekawa partition. Mr Rieper also prepared a set of calculations and supporting documents in relation to the Te Mingi partition. These sets of documents were subsequently labelled "Set B" by Mrs Parkin.

[25] Prior to the hearing on 21 November 2013 Mr Rieper also provided a report dated 15 November 2013 setting out the proposed share amalgamation methodologies for the PI in relation to the Parengarenga A and B3 Residue blocks, as well as dealing with Te Mingi and Ngatekawa partitions, and identifying further errors in relation to three successions and the manner of inclusion of the Pakohu 4E1 Block in the Ngatekawa title. In support of that report, Mr Rieper filed three Eastlight folders comprising schedules and original Court and incorporation records relating to the Ngatekawa partition (one file) and the Te Mingi partition (two files). Mrs Parkin labelled these various documents "Set C".

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[10] 109 Taitokerau MB 146-195 (109 TTK 146-195).
[11] 70 Taitokerau MB 127-143 (70 TTK 127-143).

[26] Third, on 29 August 2014 I directed the Registrar to complete a report pursuant to s 40 of the 1993 Act with the assistance of Mr Bob Adam, a retired surveyor, which summarises the various applications before the Court, reviews the evidence submitted and sets out the orders and actions needed to address the title and shareholding issues.[12] The report was completed on 30 October 2014 by the case manager, Mrs Parkin, together with Mr Adam.

[27] The hearing on 21 November 2014 was largely concerned with clarifying the various reports that had been filed. Mr Adam spoke to aspects of his report and concentrated primarily on the land title situation. He identified further anomalies with the land titles of which even the PI officers were unaware.

[28] Most of the discussion concerned Mr Rieper's reports and his knowledge of the land title and share register issues. Mr Rieper clearly has a comprehensive understanding of the history of the PI and its related titles, and the steps required to remedy the errors. I discussed his reports with him in some detail. He explained the historical causes of the errors in the PI's share registers, the errors themselves, the Ngatekawa partition, the similar problems that risk being repeated with the Te Mingi partition (and possibly the Pakohu 2B2AJ partition), and the PI's overall aim of amalgamating its two share registers into a single share register.

[29] Ms Petera spoke to the Te Mingi partition and the MI's share register. It appears that the MI's share register is not afflicted by the same problems as the PI's share register, though it has yet to be fully reconciled.

[30] Overall, the hearings confirmed that there is no real dispute about the nature and extent of the problems that need to be remedied. The complexity arises only from the need to ensure that the correct methodology is applied and in the correct sequence.

Background

[31] Before discussing the specific problems and the proposed remedies I set out the relevant history of the land titles, incorporations and share registers.

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[12] 85 Taitokerau MB 165-166 (85 TTK 165-166).

Initial title amalgamation

[32] On 28 September 1956 the Court made a combined partition order whereby nine Parengarenga and Pakohu blocks were amalgamated to form the one Parengarenga Topu block comprising 39,468 acres approximately.[13] As part of that order, Pakohu 2B2AV Residue (2,923 acres approximately) was left as a separate title and Pakohu 2B2AV Part (514 acres approximately) was included in the Parengarenga Topu title.

[33] On 4 March 1965 the Court issued a similar order amalgamating 11 Pakohu and related titles into the one title known as Te Hapua 42.[14] That title included the Pakohu 2B2AV Residue block.

Constitution of Muriwhenua Incorporation

[34] Te Hapua 42 was initially vested in the Te Hapua 42 Incorporation on 4 March 1965. Eventually that incorporation became known as the MI on 9 December 1985.[15]

Partition of Parengarenga Topu and constitution of Parengarenga A Incorporation

[35] On 4 March 1965 the Court partitioned the Parengarenga Topu block into two titles.[16] First, Parengarenga A, comprising approximately 13,100 acres. This area was to be developed into forestry. Second, the Parengarenga B block comprised the balance area which was intended to be developed primarily for farming. Each block had 17,195.000 shares, and the Crown held 10,398.028 in each of those blocks at the time.

[36] It is important to note that although this was a partition, the two titles were vested in *all* the owners of the Parengarenga Topu block in their respective shares. That is, it was in effect a subdivision. Thus, any Parengarenga Topu owners as at 4 March 1965 (including the Crown) received proportionate shares in Parengarenga A and B. Further, it follows that today the original owners in Parengarenga Topu or their successors would ordinarily expect to hold equivalent shares in the successor titles, being Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A (with only a few exceptions due to individual dealings over time and the treatment of the Crown's shares).

[13] 78 Northern MB 253 (78 N 253).
[14] 3 Kaitaia MB 29-32 (3 KT 29-32).
[15] 64 Whangarei MB 278-300 (64 WH 278-300).
[16] 3 Kaitaia MB 26 (3 KT 26).

[37] The Court also constituted the PI and vested Parengarenga A in it. The Parengarenga B block was administered separately by the Crown under Part XXIV of the Māori Affairs Act 1953 ("1953 Act") as the Parengarenga Development Scheme.

Adjustments to Parengarenga A Incorporation's share register

[38] As noted, Parengarenga A initially had 17,195.000 shares. However, the total shareholding in Parengarenga A (and therefore in the PI) was subsequently amended on at least three occasions. The section 40 report prepared by Mr Adam and Mrs Parkin discloses the following changes (there may be others of which Mr Rieper and the PI are aware).

[39] On 7 October 1969 the Court made an order pursuant to s 68(5) of the Māori Affairs Amendment Act 1967 ("1967 Act") revising the total shareholding in the PI to 32,610.000 shares with the individual shares adjusted accordingly.[17]

[40] On 4 March 1971 the Court made a similar order under s 33 of the 1967 Act amending the total shareholding in the PI to 3,261,000.000 shares with the individual shares adjusted accordingly. [18] That remains the total shareholding for the Parengarenga A shares in the PI. Importantly, for our purposes, the increase from the original 17,195.000 shares to 3,261,000.000 shares involved a conversion factor of 189.64815.

[41] On 13 October 1975 the Court erroneously made an order that the total shareholding in the PI return to the figure of 32,610.000 shares.[19] This error was subsequently identified and on 14 September 1981 the Court made an order amending the earlier order of 13 October 1975 to return the shareholding to 3,261,000.000 shares.[20]

[42] On 25 January 1999 the Court made an order pursuant to s 249 of the 1993 Act increasing the total shareholding in the PI to 4,407,766.379, made up of 3,261,000.000 shares related to Parengarenga A and 1,146,766.379 shares related to Parengarenga B3 Residue (which by then had been vested in the PI).[21]

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[17] 6 Kaitaia MB 91 (6 KT 91).
[18] 6 Kaitaia MB 361 (6 KT 361).
[19] 9 Kaitaia MB 226 (9 KT 226).
[20] 58 Whangarei MB 168 (58 WH 168).
[21] 87 Whangarei MB 179 (87 WH 179).

Partition of Parengarenga B

[43] On 25 October 1968 the Court partitioned Parengarenga B into Parengarenga B1, B2 and B3.[22] At the time Parengarenga B still comprised 17,195.000 shares.

[44] Parengarenga B1 (275 acres approximately) was vested in Hoani and Mei Everitt in full satisfaction of their 137.925 shares in Parengarenga B. According to Mr Rieper, Hoani and Mei Everitt retained their shares in Parengarenga A.

[45] Parengarenga B2 (1,654 acres approximately) was vested in the names of the owners of Parengarenga B except for Hoani and Mei Everitt, and then vested in the PI. That is, it was added to the existing land the incorporation administered, being Parengarenga A, though the titles were not amalgamated at the time.

[46] Both Parengarenga B1 and B2 were released from Part XXIV of the 1953 Act.

[47] Parengarenga B3 (containing the residue area) was vested in the names of the owners of Parengarenga B excluding Hoani and Mei Everitt. It remained outside of the PI and subject to Part XXIV of the 1953 Act.

[48] The total shareholdings of Parengarenga B2 and B3 were each fixed at 17,057.075 shares, which reflected the removal of Hoani and Mei Everitt's 137.925 shares into Parengarenga B1.

Partition of Parengarenga B3

[49] On 1 August 1973 the Court further partitioned Parengarenga B3 by creating the Parengarenga B3A block comprising approximately 8.5 hectares, more commonly known as Te Pua. The Court also made a recommendation under s 439 of the 1953 Act setting aside that land as a Māori reservation for the purpose of a recreation area, camping site and fishing reserve for the common use and benefit of the Māori people of Parengarenga.[23] The Māori reservation was subsequently gazetted.[24] The balance block became known as Parengarenga B3 Residue.

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[22] 5 Kaitaia MB 248-249 (5 KT 248-249).
[23] 8 Kaitaia MB 121 (8 KT 121).
[24] "*Setting Apart Māori Freehold Land as a Māori Reservation"* (21 October 1976) 109 *New Zealand*

[50] Importantly, the ownership of Parengarenga B3A and B3 Residue reflected the ownership of Parengarenga B3. That is, it was in effect a further subdivision, and all of the owners of the original Parengarenga B3 could expect to be owners of Parengarenga B3A and Parengarenga B3 Residue.

[51] Today, the 8.5 hectare Parengarenga B3A Māori reservation has 2,819 owners with interests comprising 17,057.075 shares in total. The Māori Trustee is shown as an owner holding 4,542.22 shares. The land is vested in the PI as trustee.

Amalgamation of Parengarenga A and Parengarenga B2B

[52] As noted, Parengarenga B2 block had been included under the administration of the PI by way of an order of 25 October 1968. Subsequently, on 13 August 1969 Parengarenga B2 was further partitioned to create Parengarenga B2A (9.0674 hectares approximately), which was no longer under the incorporation, and the balance area of Parengarenga B2B (1,430 acres approximately). [25] On 13 June 1975 the Court made an order amalgamating the Parengarenga A and B2B titles to form the single Parengarenga A title.[26] It remains unclear to me whether or not this amalgamation had any impact on the shareholding of Parengarenga A. In particular, it is unclear how Hoani and Mei Everitt's interests were treated when, prior to the amalgamation, they had been shareholders in Parengarenga A but not in Parengarenga B2B.

Partition of Parengarenga B3 Residue

[53] On 5 May 1977 the Court partitioned Parengarenga B3 Residue to create Parengarenga B3B and B3C.[27] This was in order to facilitate the Crown's land development programme by separating out the Crown and Māori Trustee's interests from those of the Māori owners.

[54] Parengarenga B3B (5,806 hectares approximately) was awarded to the Crown (10,398.028 shares) and the Māori Trustee (103.787 shares), being 10,501.815 shares in total. At the time this land was valued at $2,468,190.00, though it also assumed the debt of

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Gazette 2407 at 2421.
[25] 7 Kaitakia MB 7 (7 KT 7).
[26] 9 Kaitaia MB 83 (99 KT 83).
[27] 10 Kaitaia MB 206 (10 KT 206).

the development scheme. The shareholding reflected the Crown and the Māori Trustee's interests in the total shares in the parent Parengarenga B3 Residue title (17,057.075), and amounted to a combined share of 61.57%.

[55] Parengarenga B3C (eventually calculated as 3,986.3850 hectares approximately) was awarded to the 313 Māori owners as to 1,176,880.000 shares in total. The number of shares was calculated on the basis of a valuation of the land of $1,176,880.00. The Māori owners previously held 6,555.36 shares in Parengarenga B3 Residue, being 38.43%. Thus, in effect a conversion factor of 179.53215 was applied to the existing shares of the Māori owners. Parengarenga B3C was vested in the PI as trustee under s 438 of the 1953 Act.

Subdivision of Lot 1 DP103374 from Parengarenga B3C

[56] Sometime in the 1980s it was decided to subdivide an area from Parengarenga B3C for housing. This became known as Lot 1 DP103374. A LINZ title, CFR NA56D/1466, issued on 30 January 1987. This land is now administered by the PI and has always been understood to be Māori freehold land. That must be the case. However, the title does not disclose the status of the land.

Amalgamation of Parengarenga B3B and B3C

[57] On 10 May 1990 the Court cancelled the 5 May 1977 partition orders creating Parengarenga B3B and B3C and reconstituted those two titles as Parengarenga B3 Residue.[28] I understand this occurred in the context of the Crown exiting its involvement in the Parengarenga Development Scheme under Part XXIV of the 1953 Act. Mr Rieper described this as the return of the Paua and Te Rangi Stations to the Māori owners, which actually occurred in 1989.

[58] The 10 May 1990 minute records the land "shall vest in the trustees for the time being, being the same persons who comprised the committee of management of the Parengarenga A Incorporation."[29] In fact, the signed and sealed order simply provided that the land "is hereby vested in the committee of management for the Parengarenga A Incorporation", without any express reference to a trust.

[28] 16 Kaitaia MB 247-249 (16 KT 247-249).
[29] Ibid.

[59] However, on 16 August 1991 the Court made orders under s 60 of the 1953 Act amending the earlier order of 10 May 1990 by vesting Parengarenga B3 Residue "in the owners of the former B3B and B3C in their respective shares instead of the committee of management for the Parengarenga A Incorporation", under s 445 determining the consolidated ownership of the land, and under s 438(2) vesting the land in the PI as trustee.[30] Thus, the combined effect of the 10 May 1990 and 16 August 1991 orders was that Parengarenga B3 Residue was reconstituted as a single title and vested in the PI under a separate trust.

[60] However, of most critical significance to the present proceedings, the s 445 consolidated title order for Parengarenga B3 Residue simply took the existing shareholding in Parengarenga B3C of 1,176,880.000 shares, added to it the 10,501.815 shares of the Māori Trustee (who now held the Crown and the Māori Trustee's previous interests) in Parengarenga B3B, giving rise to a total shareholding of 1,187,381.815 shares.

[61] In combining the Māori Trustee's shares in Parengarenga B3B with the Māori owners' shares in Parengarenga B3C, the Court failed to apply the conversion factor (179.53215) to the shares. That is, it should have either reduced the Māori owners' shares (from Parengarenga B3C) by 179.53215, or increased the Māori Trustee's shares (from Parengarenga B3B) by the same factor, to arrive at the correct relativities.

[62] The effect of the s 445 order was that the Māori Trustee's previous interest in Parengarenga B3 Residue of 61.57% was reduced to approximately 0.9%!

Crown and Māori Trustee shares

[63] While various changes to the titles and shareholdings had been taking place, the Crown instituted the general policy of revesting compulsorily acquired shares in Māori land (otherwise known as "uneconomic interests") in the original owners from whom they were acquired at no cost, and providing for the Māori owners to repurchase the "live-buying" shares in Māori land at a fixed valuation. This was effected by the Māori Affairs Amendment Act 1987, which amended Part XIII of the 1953 Act by way of new provisions in ss 149 to 154C.

[30] 17 Kaitaia MB 150 (17 KT 150).

[64] According to the information set out in Mr Adam's and Mrs Parkin's s 40 report, on 27 July 1993 the Māori Trustee executed a certificate pursuant to s 151 of the 1953 Act revesting uneconomic interests in Parengarenga B3 Residue in the 1,292 persons entitled. The total shares vested were stated to be 5,959.595 shares. The Māori Trustee retained 4,542.220 shares, being the "live-buying" shares, which it retains today.

[65] The treatment of these shares suffered from the same problem as the 16 August 1991 s 445 consolidated title order for Parengarenga B3 Residue: it failed to convert the shares by the conversion factor of 179.53215. As a consequence, the 1,292 Māori owners received shares in Parengarenga B3 Residue at the same undervalue as those retained by the Māori Trustee.

[66] This problem with the undervaluing of uneconomic interests and live-buying shares does not arise with Parengarenga A. That would seem to be because Parengarenga A was never partitioned with differential valuation of shares, as occurred with Parengarenga B3B and B3C. For the same reason Parengarenga B3A does not have that problem. [31]

Ngatekawa partition

[67] In the 1990s the owners associated with the original Pakohu 4 block took steps to have that title reconstituted and named "Ngatekawa". Some of those blocks formed part of the Parengarenga B3 Residue title, and some existed separately from that title.

[68] Pakohu 4 was created by partition order on 5 October 1897. On 11 February 1914 it was partitioned into Pakohu 4A, 4B, 4C, 4D and 4E.[32] Pakohu 4E was further partitioned into Pakohu 4E1 and 4E2 on 11 February 1918.[33] Importantly, Pakohu 4C was a burial reserve contributed by all five original owners (comprising 2 acres 2 roods approximately) and was vested in two persons "equally" (that is, as trustees) without any relative interests being defined. Pakohu 4E1 was a five acre section for the purposes of a church site created out of the interests of Te Pania Toronge only. Thus, the effect of the 1914 and 1918 orders was that Pakohu 4 (612 acres approximately) was partitioned into the following sections:

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[31] See the evidence of Mr Rieper at 109 Taitokerau MB 178 (109 TTK 178).
[32] 53 Northern MB 45-47 (53 N 45-47).
[33] 57 Northern MB 118 (57 N 118).

(1) Pakohu 4A – 37 acres

(2) Pakohu 4B – 243 acres 3 roods and 8 perches

(3) Pakohu 4C – 2 acres 2 roods

(4) Pakohu 4D – 201 acres 3 roods and 8 perches

(5) Pakohu 4E1 – 5 acres

(6) Pakohu 4E2 – 121 acres 3 roods and 24 perches

[69] When the Parengarenga Topu title was first created on 28 September 1956 it included Pakohu 4A, 4B, 4D and 4E2. Pakohu 4C (the burial reserve) and Pakohu 4E1 (the church site) remained outside of Parengarenga Topu, and therefore never comprised part of Parengarenga B3 Residue or the PI's lands.

[70] On 4 November 1998 the Court made orders partitioning the former Pakohu 4A, 4B, 4D and 4E2 blocks from the Parengarenga B3 Residue title, and combining those blocks with Pakohu 4C and 4E1 to create the Ngatekawa block (247.6622 hectares approximately), with the balance area to be the Parengarenga B3 Residue block (9343.8378 hectares approximately). [34]

[71] Thus, the effect of the 4 November 1998 order was to reconstitute the former Pakohu 4 block and rename it "Ngatekawa". The intention of the order was to include in the Ngatekawa ownership list only those owners with shares that derived from the original Pakohu 4A, 4B, 4D and 4E2 titles, and the owners of the Pakohu 4E1 title. Because Pakohu 4C was set aside as an urupā by all five original Pakohu 4 owners without any defined beneficial interests, its individual "interests" (there were none) did not need to be included in the ownership list for Ngatekawa (there is no dispute over that approach).

[72] However, as I outline below in more detail, the 4 November 1998 Ngatekawa order was in error in four respects: it omitted to remove the equivalent shares from Parengarenga

[34] 87 Whangarei MB 107 (87 WH 107).

A and B3A that also derive from Pakohu 4A, 4B, 4D and 4E2; it removed *all* the shares in Parengarenga B3 Residue of owners associated with Pakohu 4A, 4B, 4D and 4E2 no matter what the origin of their shares; it adopted the ownership interests in Parengarenga B3 Residue which were themselves flawed due to the failure of the 16 August 1991 consolidated title order to correctly convert the Māori Trustee's interests (many of which had been returned to the Ngatekawa Māori owners as uneconomic interests); and it failed to revalue the shares being contributed to Ngatekawa to ensure the correct relativities between the Pakohu 4A, 4B, 4D and 4E2 (605 acres approximately) and Pakohu 4E1 (5 acres).

Vesting of Parengarenga B3 Residue in Parengarenga A Incorporation

[73] On 25 January 1999 the Court made an order pursuant to s 251 of the 1993 Act amending the order of incorporation of the PI of 4 March 1965 by including Parengarenga B3 Residue as part of the incorporation's land, vesting the land in the incorporation and including the shareholders per the schedule to the order.[35] This brought the trust over Parengarenga B3 Residue to an end. However, the orders repeated the error in the 16 August 1991 order.

[74] The schedule to the order for Parengarenga B3 Residue sets out 2172 shareholders holding 1,146,766.379 shares in total. The Māori Trustee is listed as holding 4542.220 shares, which represented the "live-buying" interests it retained. The "uneconomic interests" had been returned to the Māori owners in 1993 (per the discussion above at [63] to [65]). The total shareholding in Parengarenga B3 Residue was reduced from the total per the 16 August 1991 order of 1,187,381.815 shares to 1,146,766.379 shares by reason of the removal of the shares allocated to the Ngatekawa block on 4 January 1998, being 40,615.436 shares (excluding the 250 shares sourced from Pokahu 4E1).

[75] Pursuant to s 249 of the 1993 Act the Court also ordered that the total number of shares of the PI would henceforth be 4,407,766.379. Thus, the Court took the total shareholding of the PI of 3,261,000.000 shares as at 4 March 1971 (which reflected the ownership of Parengarenga A) and added the 1,146,766.379 shares attributed to

[35] 87 Whangarei MB 179 (87 WH 179).

Parengarenga B3 Residue, to give the total shareholding of 4,407,766.379. This order also repeated the error in the 16 August 1991 order.

[76] Notwithstanding the Court's order of 25 January 1999 including Parengarenga B3 Residue as corpus lands under the PI and amending the total number of shares of the incorporation's share register, the PI still maintains two separate share registers for Parengarenga A (A shares) and Parengarenga B3 Residue (B shares) due to the underlying errors in the B share register.

[77] Further, Parengarenga A and Parengarenga B3 Residue remain separate Māori land titles. However, for reasons that remain unclear, the only LINZ titles relate to Parengarenga A (CFR NA71D/732) and the former "Part Parengarenga B3C" (CFR NA67B/56). There is no LINZ title for Parengarenga B3 Residue per the 4 November 1998 title order.

Te Mingi partition

[78] On 17 September 2004 the Court made conditional orders partitioning the former Pakohu 2B2AV Part block from Parengarenga B3 Residue, giving that new title the name "Te Mingi" and vesting the land in the MI.[36] The rationale for the partition was similar to that of the Ngatekawa partition: the owners of the former Pakohu 2B2AV Part block wished to have their interests removed from the PI (though administered by the MI). The PI and the MI agreed to this taking place.

[79] The orders of 17 September 2004 were subject to confirmation of survey within six months. That did not take place. However, there is no dispute that the orders should be completed and the parties now rely on computed survey plan ML 430008 that depicts the neighbouring Ngatekawa block title to define the Te Mingi block. The plan shows Te Mingi (referred to as "Part Parengarenga B3C block") as comprising 208.0089 hectares approximately. I see no difficulty in adopting the survey definition in ML 430008, however any survey plan will need to expressly refer to "Te Mingi".

[36] 23 Kaitaia MB 183-184 (23 KT 183-184).

[80] The greater difficulty in completing the Te Mingi partition is to ensure that the correct shares and interests are removed from Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A. That is, the Court needs to avoid the problems that arose with the Ngatekawa partition. In fact, some of the shares associated with the Te Mingi block have already been erroneously included in the Ngatekawa block. Furthermore, an exercise needs to be undertaken to ensure that the shareholders associated with Te Mingi that are transferred from the PI to the MI have their shares converted correctly and transferred to the MI's share register. Once again, that is a matter of determining the correct conversion factor. That exercise has yet to be undertaken and is something the MI will need to address.

Partition of former Pakohu 2B2AJ block from Te Hapua 42

[81] On 9 December 2013 the Court made a conditional partition order (and other orders) partitioning the former Pakohu 2B2AJ block (to be known as Te Hapua 42A) from Te Hapua 42 (the residue to be known as Te Hapua 42B), which is administered by the MI. As noted earlier, the orders were conditional on valuations and plans being filed within two months. Two issues have since been raised with Deputy Chief Judge Fox to address, and she has indicated that a rehearing may be required. My only interest in this application is to ensure that similar problems to those that have affected the Ngatekawa partition do not affect the Pakohu 2B2AJ partition. I note for the record that the Pakohu 2B2AJ partition has nothing to do with the PI.

[82] The Pakohu 2B2AJ partition is similar to the Ngatekawa partition in that a former block is to be removed from an amalgamated title administered by an incorporation. However, the exercise for Pakohu 2B2AJ should be more straightforward than for Ngatekawa as the Te Hapua 42 block does not suffer from the same title complications: all the interests derived from Pakohu 2B2AJ are located in Te Hapua 42, and the Court does not need to revalue the interests in the Pakohu 2B2AJ partition block (Te Hapua 42A) to establish the correct relativities between the owners.

[83] Nevertheless, given that the Te Mingi partition was ordered on 17 September 2004 and will affect the overall shareholding in the MI, and given that the Ngatekawa partition needs to be corrected before the Te Mingi partition can be completed, it does seem that the

Pakohu 2B2AJ partition orders will need to await the completion of those other two partitions. Hence, the sequence of the steps is critical.

The specific problems with the share registers and Court orders

[84] I now turn to identify the specific problems with the share registers and Court orders, many of which have been mentioned above.

Parengarenga A Incorporation's share register

[85] As noted, the PI currently maintains two separate share registers, being A shares associated with Parengarenga A, and B shares associated with Parengarenga B3 Residue. As I understand Mr Rieper's evidence, the PI does not have any difficulties with the A register. That is because the Crown and the Māori Trustee's uneconomic interests and live-buying shares, or any uneconomic interests returned to the Māori owners, have been entered into the share register at the correct value.

[86] There are, however, significant problems with the B shares which reflect the ownership in Parengarenga B3 Residue. These all stem from the Court's 16 August 1991 consolidated title order for Parengarenga B3 Residue.

[87] As noted above, prior to 16 August 1991 Parengarenga B3B had been vested in the Crown and the Māori Trustee as to 10,501.815 shares in total, and Parengarenga B3C had been vested in the Māori owners as to 1,176,880.000 shares in total. When creating the total shareholding in Parengarenga B3C on 5 May 1977, the Court effectively applied a conversion factor of 179.53215. Thus, when on 16 August 1991 the Court "married" the shares of the Māori Trustee in Parengarenga B3B with those of the Māori owners in Parengarenga B3C, the Court should have applied that conversion factor to either the Māori owners shares (by reducing them by that factor) or to the Māori Trustee's shares (by increasing them by that factor). It did neither.

[88] As a result of this error, the Māori Trustee's relative interests in the land reduced from 61.57% to approximately 0.9%. This also meant that when the Māori Trustee returned uneconomic interests to the Māori owners on 27 July 1993 (stated to be 5,959.595 shares), those shares were also transferred at an equivalent undervalue.

[89] The consequence of all of this is that the Parengarenga B3 Residue ownership list and the corresponding B share register for the PI do not reflect the relative interests in the land and are wholly inaccurate. That situation affected not only Parengarenga B3 Residue but also the Ngatekawa partition and, if not addressed, will also affect the Te Mingi partition.

[90] As noted earlier, Parengarenga B3A, like Parengarenga A, does not have problems with the uneconomic interests and live-buying shares, and they are recorded in the Court's title order at the correct value.

Ngatekawa partition

[91] The exercise of reconstituting the Ngatekawa block in 1998 required the Court to trace the original shares from the Pakohu 4A, 4B, 4D and 4E2 blocks that first went into the Parengarenga Topu block in 1956; remove those shares from the blocks in which the shares were eventually located, which by 1998 were the Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A blocks; and "marry" those shares with the shares in Pakohu 4E1 at the correct conversion rate. Ms Moses and Mr Rieper say the Court failed to carry out that exercise correctly in four respects.

[92] First, the owners of Pakohu 4A, 4B, 4D and 4E2 were originally relocated into Parengarenga Topu. Through the various partitions I have outlined above, those same owners and their successors ended up with equivalent shares in each of Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A. Thus, although in 1998 the Ngatekawa block was being partitioned from Parengarenga B3 Residue only, the shares derived from Pakohu 4A, 4B, 4D and 4E2 were spread across Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A, and needed to be removed from each of those blocks in order to correctly effect the partition. That did not happen. Instead, the Court removed shares from Parengarenga B3 Residue only.

[93] I agree with Ms Moses and Mr Rieper that all shares in Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A that are derived from Pakohu 4A, 4B, 4D and 4E2 must be transferred across to Ngatekawa, and the shareholdings and ownership in those blocks reduced correspondingly.

[94] Second, when the Court identified owners with shares in Parengarenga B3 Residue derived from Pakohu 4A, 4B, 4D and 4E2, the Court in some instances removed *all* of those owners' shares from Parengarenga B3 Residue no matter what their origin. Mr Rieper was able to point to several examples where owners had significant interests in Parengarenga B3 Residue derived from other Parengarenga blocks that originally made up the Parengarenga Topu block in 1956, who had *all* of their interests relocated to Ngatekawa. The examples I point to below [98] illustrate this problem.

[95] Third, the ownership interests in Parengarenga B3 Residue relied on by the Court were themselves flawed due to the Court's 16 August 1991 consolidated title order failing to correctly convert the Māori Trustee's interest in the former Parengarenga B3B title (see [86] to [89] above).

[96] Fourth, when the Court combined the shares from the original Pakohu 4A, 4B, 4D and 4E2 blocks with the Pakohu 4E1 block, the Court failed to revalue the shares to ensure the correct relativities. The three problems noted above were compounded by this failure. Instead, the Court adopted 330 shares for Pakohu 4A, 4B, 4D and 4E2 as the starting point (which was the value used when those interests were added to Parengarenga Topu); erroneously included all the interests of some owners in Parengarenga B3 Residue (amounting to over 40,000 shares); and then added those interests to the 250 shares in Pakohu 4E1. Bearing in mind that Pakohu 4A, 4B, 4D and 4E2 amounted to about 605 acres and Pakohu 4E1 5 acres, the problems with allocating 330 and 250 shares respectively to those two areas should be self-evident.

[97] The Court could have done the revaluation in one of two ways. First, an actual revaluation of the five titles (excluding Pakohu 4C). That would have been costly and ultimately unnecessary. Secondly, the revaluation could have simply been based on the areas of those five blocks. Mr Rieper says that is the preferable approach as it is fair to all owners. I agree.

[98] The overall problems with the Ngatekawa ownership list are demonstrated by the aberrant size of some of the shareholdings. The original list as at 4 November 1998 lists 183 owners holding 40,864.36 shares in total. The first 116 owners derive from Parengarenga B3 Residue, and owners numbered 117 to 183 derive from Pakohu 4E1.

However, within the list of owners derived from Parengarenga B3 Residue, several owners have shares out of all proportion to all the other owners: Bruce Nopera holds 6,032.281 shares, Hohepa Hare 4,741.803 shares, James Whioke 948.361 shares, Kerry Whioke 948.360 shares, Kiri Teina Nopera 24,793.392 shares, Morehu Whioke 948.361 shares, Sidney Whioke 948.361 shares and William Whioke 948.360 shares. The other 174 owners in Ngatekawa individually hold shares of 50 or less. Thus, nine out of 187 owners hold 98.64% of the interests in the land. These aberrations reflect the combined effect of the four problems identified above.

Ngatekawa successions

[99] During the course of addressing the problems with the Ngatekawa ownership list Ms Moses and Mr Rieper identified three successions that affect the Ngatekawa block (and possibly other interests) where the succession orders were incorrect by reason of interests being mistakenly vested in persons with the same name as persons associated with the Ngatekawa block. I set out below that extract from Mr Rieper's report of 15 November 2013 which explains the three examples:

> 1. Erana Aperahama (72 N 468) – Erana Aperahama was the daughter of Aperahama Te Ngara and Kere Eruera Wahia. Her shares were succeeded to by a different Erana Aperahama (the daughter of Aperahama Taiawarua and Hera) who does not whakapapa to the Ngatekawa block. This was already brought to the attention of the Court on 20 March 1942 (See Folio #30) who acknowledged that a mistake had been made and that these interests rightfully belonged to Mere Hori, Rorana Hori, & Raumati Hori. Despite this, the shareholdings were not corrected and there were subsequent successions in error. Because it has already been acknowledged by the Court, we have adjusted the draft share schedule accordingly.
>
> 2. Mere Hori (3KH (S) 64-65) – Mere Hori was the daughter of Erana Aperahama above. She married Hone Pani Karena. Her shares were succeeded to in error by the family of Mere Hori of Manukau who married Thomas Wiremu Munu and are now in the Mere Hori Whānau Trust (See Folio #89). Mere Hori of Manukau does not whakapapa to Ngatekawa block.
>
> 3. Mate Petricevich (2 Kaitaia (S) 187) – The Mate or Maati Petricevich with interests in Ngatekawa is the son of Lawrence Petricevich and Kere Hare Raharuhi. Mate had no issue. It appears that Mate's interests were accidentally included in the succession to the interests of his sister in-law Ngamatewhirua (Mate) Karaihe Mare who married Mate's brother, Waata. Ngamatewhirua did not have intersts in Ngatekawa (See Folio #102).

[100] These three alleged errors were to be the subject of separate s 45 applications to the Chief Judge. I intend amending Heeki Moses' s 67 application to include s 45 applications concerning these three successions.

Te Mingi partition

[101] There have in fact not yet been any errors in the Te Mingi partition orders as the orders have yet to be completed. However, as outlined above, those orders cannot be completed until the Ngatekawa partition orders and the PI's share registers are corrected. Once those steps are completed, it will be possible to identify the correct shareholders and shares in Parengarenga A, Parengarenga B3 Residue and Parengarenga B3A that are derived from Pakohu 2B2AV Part block. It will then be necessary to ensure that those shares are converted to the correct value before they are incorporated into the MI's share register.

Pakohu 2B2AJ partition

[102] Like the Te Mingi partition, there is as yet no error with the Pakohu 2B2AJ partition as the orders have yet to be completed. However, it does seem to me that, timing wise, the addition of the Te Mingi shareholders into the MI's share register should occur first before the Pakohu 2B2AJ shareholders and shares are removed from the MI.

Muriwhenua Incorporation share register

[103] The MI has yet to confirm that it has completed the reconciliation of its share register. As noted earlier [23], at the hearing on 20 November 2013 Ms Petera advised that the MI was still in the process of reconciling its share register. I understand the Māori Trustee is not a shareholder in the MI, and that the MI is therefore not afflicted by the same problems as the PI with uneconomic interests and live-buying shares. Nevertheless, there are other outstanding issues with the MI's share register, and the incorporation will need to complete the reconciliation of its share register before the Te Mingi block and owners can be added to the incorporation, and before Pakohu 2B2AJ can be removed from the incorporation.

Parengarenga B3 Residue title

[104] The Court's order of 4 November 1998 that gave rise to the Ngatekawa title also provided for the residue area of Parengarenga B3 Residue comprising 9343.8378 hectares approximately. The title was vested in the PI on 25 January 1999. A LINZ title has yet to issue for that land block. The effect of the 17 September 2004 Court order creating the Te Mingi block is that the Parengarenga B3 Residue title will further reduce, and a fresh title order will be required. It may take some time for that to issue, given the steps that need to be taken to address the share register issues. I will therefore direct that the 4 November 1998 and 25 January 1999 title order for Parengarenga B3 Residue be registered as a matter of priority. However, as yet a survey plan has not been completed for the Parengarenga B3 Residue title order; it is supported by a sketch plan only. A compiled plan should be sufficient. I will direct the Registrar to engage a surveyor to prepare a survey plan under the Registrar's direction. Mr Adam will need to check that the survey plan is in order.

Lot 1 DP103374

[105] All that is required of the Court in relation to Lot 1 DP103374 is for a status order to issue under s 131 of the 1993 Act declaring the land to be Māori freehold land. I will make an order to that effect.

The approach to addressing the problems

[106] The PI, the MI, and owners associated with Ngatekawa have gone to considerable lengths to identify the various problems and propose methodologies to address them. I discuss below the jurisdiction to correct these problems, the PI's proposed methodologies, and my conclusions as to the steps needed to be taken to address the problems.

Jurisdiction

[107] This Court has a relatively limited jurisdiction to address errors in Court orders and incorporation share registers. Under s 86 of the 1993 Act the Court has the power to amend orders "to give effect to the true intention of any decision or determination of the Court, or to record the actual course and nature of any proceedings in the Court". This is what is known as a "slip" provision and does not enable the Court to change the outcome

of an order if the Court simply got the order wrong. The various orders with which we are concerned do not come under s 86.

[108] Rather, the erroneous orders require an application under s 45 of the 1993 Act to the Chief Judge who can cancel or amend an order where he is satisfied that an order "was erroneous in fact or in law because of any mistake or omission on the part of the Court or the Registrar or in the presentation of the facts of the case to the Court or the Registrar".

[109] Consequently, it is necessary to refer the various erroneous orders to the Chief Judge for a ruling and correction. I will amend Heeki Moses' s 67 application to be under s 45 and will issue directions which will hopefully expedite the processing of that application. Given the expanded nature of the errors identified, it is appropriate to substitute the Registrar at Whangarei as applicant.

[110] As far as the general problems with the incorporations' share registers are concerned, although the two s 281 applications have brought the issues to the attention of the Court, s 281(2) only allows the Court to exercise the powers conferred on it by s 280(7) by way of remedies, which are rather prescriptive. Section 280(7) provides as follows:

> **280 Investigation of incorporation's affairs**
>
> (7) Where, as the result of any investigation or examination into the affairs of a Maori incorporation, the Court thinks it necessary to do so, it may, notwithstanding any of the provisions of this Part of this Act, do all or any of the following:
>
> (a) Remove from office any member or members of the committee of management or the secretary of the incorporation:
>
> (b) Appoint, for such period as it thinks fit, some person or persons to hold office as an additional member or additional members of the committee of management:
>
> (c) Suspend for such term as it thinks fit the powers of the members of the committee of management, and appoint one or more competent persons to exercise all the powers of the committee:
>
> (d) Impose such restrictions, conditions, or exceptions as it thinks fit on the powers of the incorporation:
>
> (e) Give such directions as it thinks fit for the conduct of the business of the incorporation:

(f) Suspend for such period as the Court thinks fit all or any of the provisions of the constitution of the incorporation:

(g) Order the winding up of the incorporation:

(h) Refer any matter to the Attorney-General to consider whether any **[**charging document should be filed**]** or any prosecution commenced against any person or persons.

[111] These powers do not enable the Court to expressly address the shareholding of an incorporation. On my reading of the 1993 Act, the Court only has the express power to address the shareholding of an incorporation when it is first incorporated (s 249) or where additional Māori land is included in an incorporation (s 251) or where incorporations are amalgamated (s 252). In all other respects it is the responsibility of the incorporation itself to maintain its share register (s 263) and to have a share register audited (s 277(6)(d)). Arguably, under s 280(7)(e) the Court could direct an incorporation to correct its share register under r 34 of the Māori Incorporations Constitution Regulations 1994 ("1994 Regulations"), if that were necessary. Here, the PI is more than willing to correct the problems with its share registers, so I cannot see that a direction under s 280(7)(e) is required.

[112] One related point deserves comment. It is not immediately clear from the 1993 Act what express power the Court has to reduce the shareholding in an incorporation where land and shareholders are removed. Sections 249, 251 and 252 do not appear to apply. It may be that the Court simply needs to invoke s 289 and following which govern partitions.

[113] What then are the tools for dealing with the problems with the Court orders and the PI's share register?

[114] First, although it was not entirely clear to me during the hearings, it is now clear that the root causes of the problems are orders of the Court. Therefore those orders must be corrected. That includes the 16 August 1991 s 445 consolidated title order for Parengarenga B3 Residue, the 4 November 1998 ss 306 and 289 Ngatekawa and Parengarenga B3 Residue partition orders that determined the individual interests in the land, and the 25 January 1999 ss 249 and 251 orders determining the shareholding of the PI. Also, the Māori Trustee's 27 July 1993 certificate of revesting under s 151 of the 1953

Act which, while not an order made by the Court, pursuant to s 151A(b) it is deemed to be an order of the Court.

[115] Second, pursuant to r 34 of the 1994 Regulations the PI can correct its share registers once the Chief Judge has corrected the Court's orders. Regulation 34 provides as follows:

> 34 **Correction to share register**
>
> No correction shall be made to the share register except with the approval and on the direction of the committee, which shall be entitled first to require further evidence as to the authority for any proposed correction, and an indemnity against claims consequential upon any such correction.

[116] This power is important as, once the various orders of the Court are corrected, the PI and the MI may need to correct their share registers in terms of any subsequent transfers and successions.

[117] Third, the Court arguably has a role under s 18(1)(a) of the 1993 Act to verify the PI's and MI's corrections to their share register(s). That appears possible by reason of s 250(2) of the 1993 Act, which provides that beneficial interests in the land under an incorporation remain vested in the owners, and therefore come under the purview of s 18(1)(a). Thus, once the Chief Judge has made his orders and the PI has produced its corrected share register for the B shares and a composite single share register for the PI as a whole, the Court can determine the share registers to be correct under s 18(1)(a). So too for the MI, once it has produced its corrected share register.

The methodologies

[118] The PI, with the considerable assistance of Mr Rieper, has identified the problems with its B share register and the Ngatekawa partition, and has proposed separate methodologies to deal with those two matters together with the Te Mingi partition. The methodologies were discussed in detail at a general meeting of the shareholders of the PI in 2013 and endorsed by that meeting.

[119] I agree with the general principles and approach in the PI's methodologies. However, when they were discussed in Court I did not fully appreciate the extent to which

Court orders were the cause of the problems, and therefore the importance of those orders being corrected. As will be seen, I suggest some modifications to the proposed methodologies, though the basic premise of each remains.

[120] As far as correcting the PI's share register is concerned, the PI's proposed methodology is as follows:

> 1. That 'A' share numbers remain the same
>
> 2. That converted 'B' shares (shares that were not compulsorily acquired and then returned by the Māori Trustee) are divided by 179.53215 (to take them back to their Parengarenga Toopu numbers) and multiplied by 189.772 to be similar to 'A' shares
>
> 3. That unconverted 'B' shares (shares that were compulsorily acquired by the Māori Trustee and later returned) are multiplied by 189.772 to be similar to 'A' shares
>
> 4. That the 'A' and adjusted 'B' share numbers are added together
>
> 5. That shareholdings are calculated to 4 decimal places and a minimum share unit is set at 0.0001 shares (i.e. shareholdings cannot be split any smaller than this in the future)

[121] I agree with the general principle of this approach but note the following.

[122] First, I have calculated that the conversion factor for the Parengarenga A shares was 189.64815 (see [40] above). The PI suggested a figure of 189.772. That is wrong. In fact, Mr Rieper's *Parengarenga Share Breakdown*, which is part of his 15 November 2013 report, demonstrates the error. It used the conversion factor of 189.772 to arrive at a total shareholding of 3,263,130.000 shares, being an "over rounding" of 2,130 shares. That excess of 2,130 shares is directly attributable to using 189.772 instead of 189.64815. The PI will need to advise whether using the correct conversion factor of 189.64815 will also resolve any other share "rounding" issues that Mr Rieper had identified.

[123] Second, step 3 applies to *any* B shares that derive from the Māori Trustee's original 10,501.815 shares as at 16 August 1991. That is, including the 4542.220 shares retained by the Māori Trustee.

[124] Third, there is also a small query with the amalgamation of Parengarenga A and Parengarenga B2B as to the treatment of Hoani and Mei Everitt, as they no longer had any interests in Parengarenga B2B (see [52] above).

[125] The ultimate aim of the methodology is to ensure that the shares in Parengarenga B3 Residue (the B shares) correctly marry the Parengarenga B3B and B3C shares (using the conversion factor), and that the corrected B shares are then converted to the equivalent value of the A shares, so that they can be married into a single share register. This involves correcting the B shares as at 16 August 1991; increasing them to the same value as the A shares; and then factoring in any subsequent transfers and successions.

[126] I suggest a slightly modified methodology to that proposed by the PI, as follows:

(1) The A shares remain the same, i.e. 3,261,000.000;

(2) The B shares derived from Parengarenga B3C (that is, the shares that were not held by the Māori Trustee) are divided by 179.53215 (to take them back to the Parengarenga Topu share value) and are added to the B shares derived from Parengarenga B3B;

(3) The total B shares (which should now be at the same share value) are multiplied by the conversion factor of 189.64815 (to arrive at the same share value as the A shares);

(4) The A and B shares are added together and adjusted by any subsequent transfers and successions (including shares returned by the Māori Trustee to the Māori owners on 27 July 1993);

(5) The shareholdings are calculated to four decimal places and with a minimum share unit set at 0.0001 shares.

[127] As far as the Ngatekawa partition is concerned, the PI's proposed methodology is:

1. Identified Ngatekawa (Pakohu 4A, 4B, 4D & 4E2) block values (£330 total) and Parengarenga Toopu block shares that related to Ngatekawa (£1 = 1 share = 330 shares total for Ngatekawa)

2. Identified Parengarenga Toopu owners with shares from Ngatekawa

3. Calculated current Ngatekawa related shares in:

   a. Parengarenga A Incorporation
   = Parengarenga Toopu x 189.772 (= 62,625 total)

   b. Parengarenga B3 Residue (Parengarenga B3C Trust)
   Either = Parengarenga Toopu x 179.53215
   (38% of B3 Residue shares were converted this way)

   Or = Parengarenga Toopu
   (62% of B3 Residue shares were not converted and remain at their Toopu values. These are currently, or were previously, held by the Māori Trustee)

4. Identified which Ngatekawa related shares are still held by their 1956 owners and which have been succeeded to or transferred since

5. Identified successors (or transferees) to 1956 owners

6. Calculated the number of A, B3 Residue & B3A shares that relate to each successor to be deducted

7. Calculated the number of Ngatekawa shares to be issued to each successor

[128] Once again, I agree with this approach in principle but suggest it needs to be modified as follows:

(1) Correct the Parengarenga B3 Residue shares as at 16 August 1991 per the s 45 orders and adjust in relation to any transfers and successions up to 4 November 1998;

(2) Identify as at 4 November 1998:

   (a) The shareholders and shares in each of the A share register of the PI (in relation to Parengarenga A), Parengarenga B3 Residue and Parengarenga B3A derived from Pakohu 4A, 4B, 4D and 4E2 to be removed from those three blocks;

   (b) The shareholders and shares in Pakohu 4E1;

   (c) The preliminary list of shareholders and shares to be transferred to Ngatekawa by adding (2)(a) and (b) together;

(d) The residue shareholders and shares in each of the A share register of the PI (in relation to Parengarenga A), Parengarenga B3 Residue and Parengarenga B3A

(3) Convert the preliminary list of shareholders and shares to be transferred to Ngatekawa by applying a conversion factor based on the land area of those five blocks and compile a single ownership list for Ngatekawa as at 4 November 1998;

(4) Court issues order under s 128 of the 1993 Act determining the updated ownership of Ngatekawa as at 1 January 2016 taking into account transfers and successions since 4 November 1998.

[129] As far as the Te Mingi partition is concerned, the PI's proposed methodology is:

1. Identified Te Mingi (Pakohu 2B2AV) block value (£440) and Parengarenga Toopu block shares that related to Te Mingi (£1 = 1 share = 440 shares total for Te Mingi)

2. Identified Parengarenga Toopu owners with shares from Pakohu 2B2AV (363 pre-Toopu owners)

3. Calculated current Te Mingi related shares in:

    a. Parengarenga A Incorporation
    = Parengarenga Toopu x 189.772 (= 83,500 total)

    b. Parengarenga B3 Residue (Parengarenga B3C Trust)
    Either = Parengarenga Toopu x 179.53215
    (38% of B3 Residue shares were converted this way)

    Or = Parengarenga Toopu
    (62% of B3 Residue shares were not converted and remain at their Toopu values. These are currently, or were previously, held by the Māori Trustee)

    c. Parengarenga B3A (Te Pua Reserve)
    = Parengarenga Toopu
    (440 less 3.062 already deducted from Parengarenga B1 = 436.938 total)

4. Identified which Te Mingi related shares are still held by their 1956 owners and which have been succeeded to or transferred since

5. Identified successors (or transferees) to 1956 owners

6. Calculated the number of A, B3 Residue & B3A shares that relate to each successor to be deducted

7. Calculated the number of Muriwhenua shares to be issued to each successor

Note: The only shareholdings that were handled differently were those affected by the sale of Parengarenga B1 block. Those Te Mingi owners gave up their shares in Parengarenga B as part of their purchase so they do not have any B shares to give towards their Te Mingi interests. The only fair way to resolve this is to deduct the equivalent number of A shares.

[130] I also agree in principle with the approach to the Te Mingi partition.

[131] In relation to the PI's "Note", it does seem that if Hoani and Mei Everitt had all their interests in Parengarenga B (including those derived from Pakohu 2B2AV) partitioned out into Parengarenga B1, then an adjustment needs to be made to their remaining shares in Parengarenga A. That is, they will need to contribute additional shares from Parengarenga A that reflect the equivalent shares they previously held in Parengarenga B that derived from Pakohu 2B2AV.

[132] My modified methodology for Te Mingi is as follows:

(1) Correct the Parengarenga B3 Residue shares as at 25 January 1999 per the s 45 orders and adjust by any transfers and successions up to 17 September 2004;

(2) Identify as at 17 September 2004:

(a) The shareholders and shares in each of the A share register of the PI (in relation to Parengarenga A), the B share register of the PI (in relation to Parengarenga B3 Residue) and Parengarenga B3A derived from Pakohu 2B2AV;

(b) The shares of Hoani and Mei Everitt in the A share register of the PI (in relation to Parengarenga A) that reflect the equivalent shares they previously held in Parengarenga B that derived from Pakohu 2B2AV;

(c) The preliminary list of shareholders and shares to be transferred to Te Mingi by adding (2)(a) and (b) together;

(d) The residue shareholders and shares in each of the A share register of the PI, the B share register of the PI and Parengarenga B3A.

(3) Convert the preliminary list of shareholders and shares to be transferred to Te Mingi by the correct conversion factor in order to be added to the MI's share register. Whether this is to be based on updated valuations or historical valuations or land areas is for the MI to advise on.

(4) Produce corrected and updated share registers for the PI and the MI as at 17 September 2004.

(5) Court issues order under s 128 of the 1993 Act determining the updated ownership of Te Mingi as at 1 January 2016 taking into account transfers and successions since 17 September 2004.

Timing and rounding

[133] It will be seen from the steps that I set out below that certain calculations need to be undertaken at certain dates. I am concerned that the dates at which the share registers are fixed should not have any unintended consequences.

[134] During the hearings I was told that some transfers and succession orders have been held in abeyance by the PI pending resolution of issues with the B share register. I propose that as part of these proceedings the date at which the share registers of the PI are corrected to is 1 January 2016, and that the date for the MI is to be 9 December 2013 (being the date when the Pakohu 2B2AJ block partition is to be effected). Any subsequent transfers or successions will need to be processed separately by the two incorporations.

[135] Mr Rieper mentioned some discrepancies with calculating the exact number of shares, which he put down to issues of rounding in the past. I have already identified the problem with the incorrect conversion factor being adopted. I will be interested to know

whether any of the other problems Mr Rieper identified remain once the correct conversion factor is used.

The steps required to address the problems

[136] In essence, what is required is for the Chief Judge to correct the erroneous orders as far as he can; for the PI in conjunction with the Registrar to then produce the corrected schedules of shares to be removed and reallocated as part of the Ngatekawa partition; for the Chief Judge to issue replacement orders to complete the Ngatekawa partition; for the MI to complete its reconciliation of its share register; for the Court to complete the Te Mingi partition per the approach to the Ngatekawa partition; for the PI and MI to produce corrected share registers as at 1 January 2016 to be verified by the Court; and, once all of that is done, for the Court to complete the former Pakohu 2B2AJ block partition orders.

[137] On my assessment, the following steps need to be taken in the following sequence:

(1) The Court amends Heeki Moses' s 67 application to be in the name of the Registrar and under s 45 of the 1993 Act to the Chief Judge to correct the following orders of the Court:

(a) The 20 March 1942 succession orders in relation to Erana Aperahama;[37]

(b) The 25 August 1999 succession orders in relation to Mere Hori[38];

(c) The 28 January 2004 succession orders in relation to Mate Petricevich;[39]

(d) The 16 August 1991 s 445 consolidated title order for Parengarenga B3 Residue[40] and the Māori Trustee's 27 July 1993 certificate of revesting under s 151 of the 1953 Act;

[37] 72 Northern MB 468 (72 N 468).
[38] 3 Kaikohe Succession MB 64-65 (3 KH(S) 64-65).
[39] 2 Kaitaia Succession MB 187 (2 KT(S) 187)
[40] 17 Kaitaia MB 150 (17 KT 150).

(e) The 4 November 1998 ss 306 and 289 partition orders for Ngatekawa and Parengarenga B3 Residue but only in terms of the determination of individual interests;[41]and

(f) The 25 January 1999 ss 249 and 251 orders in relation to the PI's shareholding.[42]

(2) The Registrar prepares a full report to the Chief Judge in relation to the s 45 application based on this decision and any other relevant Court records.

(3) Providing the Chief Judge concludes that it is appropriate to make orders under s 45 in relation to the above matters, the Chief Judge makes orders:

(a) Correcting the orders in (1)(a) to (c) above and any consequential orders.

(b) Correcting the order and certificate in (1)(d) above by dividing the shares of the Māori owners in Parengarenga B3 Residue (derived from Parengarenga B3C) by the conversion factor of 179.53215 (to arrive at the original Parengarenga Topu share value for all shares in Parengarenga B3 Residue); multiplying all the shares in Parengarenga B3 Residue as at 16 August 1991 by the conversion factor of 189.64815 (to arrive at the share value equivalent to Parengarenga A); adjusting the total shareholding in Parengarenga B3 Residue accordingly; and multiplying all the shares transferred by the Māori Trustee to the Māori owners by way of his certificate of 27 July 1993 by the conversion factor of 189.64815.

(c) Cancelling the orders in (1)(e) only in terms of the determination of individual interests in the Ngatekawa block and in the Parengarenga B3 Residue block. The interests return to the Parengarenga B3 Residue block as it stood before 4 November 1998 (but corrected per (3)(b) above) in order for the PI in conjunction with the Registrar to

[41] 87 Whangarei MB 107 (87 WH 107).
[42] 87 Whangarei MB 179 (87 WH 179).

complete step (4) below. The Chief Judge refrains from issuing replacement orders until step (4) has been completed.

(d) Cancelling the orders in (1)(f). The Chief Judge refrains from issuing replacement orders until steps (4) and (5) have been completed.

(4) Following the Chief Judge's initial orders under step (3) above, the PI in conjunction with the Registrar submit a report to the Chief Judge setting out:

(a) In relation to the completion of the Ngatekawa partition, the following as at 4 November 1998:

(i) The shareholders and shares in each of the A share register of the PI (in relation to Parengarenga A), Parengarenga B3 Residue and Parengarenga B3A derived from Pakohu 4A, 4B, 4D and 4E2 to be removed from those three blocks and transferred to the Ngatekawa block, and the residue shareholders and shares in each of the A share register of the PI, Parengarenga B3 Residue and Parengarenga B3A;

(ii) The owners and converted ownership interests in Ngatekawa derived from the shareholders in (4)(a)(i) above, which interests are converted on the basis of the relative land areas of Pakohu 4A, 4B, 4D, 4E1 and 4E2.

(b) In relation to the 25 January 1999 ss 249 and 251 orders, the correct shareholding in Parengarenga B3 Residue and the PI as at that date as a result of the above steps.

(5) The Chief Judge issues replacement orders for the 4 November 1998 orders by determining the individual and total interests in the Ngatekawa block and the individual and total shareholdings in the A share register of the PI (in

relation to Parengarenga A), Parengarenga B3 Residue and Parengarenga B3A.

(6) The Chief Judge issues replacement orders for the 25 January 1999 ss 249 and 251 orders (whereby there are still separate A and B share registers).

(7) In relation to the completion of the Te Mingi partition:

(a) The MI provides to the Court its reconciled share register as at 17 September 2004 immediately prior to the partition of Te Mingi;

(b) The PI in conjunction with the Registrar submit a report to the Court setting out as at 17 September 2004 the shareholders and shares in each of the A share register of the PI (in relation to Parengarenga A), the B share register of the PI (in relation to Parengarenga B3 Residue) and Parengarenga B3A derived from the former Pakohu 2B2AV Part block to be removed from those blocks and transferred to the Te Mingi block, and the residue shareholders and shares in each of the A share register for the PI, the B share register for the PI and Parengarenga B3A;

(c) The MI in conjunction with the Registrar submit a report to the Court explaining the basis for the proposed conversion rate for the Te Mingi shareholders and shares transferring to the MI, and the shareholders and shares to be added to the MI's share register applying that conversion rate as at 17 September 2004.

(d) The Court issues any final orders to complete the Te Mingi partition.

(8) The PI reconciles the B share register and prepares a composite single share register for the PI as at 1 January 2016 pursuant to r 34 of the 1994 Regulations taking into account steps (1) to (7) above and any subsequent transfers and successions up to 1 January 2016.

(9) The MI prepares its corrected share register as at 9 December 2013 pursuant to r 34 of the 1994 Regulations taking into account steps (1) to (7) above and any subsequent transfers and successions up to 9 December 2013.

(10) The Court issues an order under s 18(1)(a) or other sections verifying the share registers of the two incorporations per (8) and (9) above. In addition, if necessary, the Court issues an order changing the name of the PI to "Parengarenga Incorporation". Upon that occurring, the reunification of the A and B share registers and the PI itself should be complete, though its land will still be held in separate titles.

(11) If necessary, the Court issues orders under s 128 of the 1993 Act determining the ownership of Parengarenga B3A, Ngatekawa and Te Mingi as at 1 January 2016 taking into account any transfers and successions up to 1 January 2016.

[138] As far as the partition of the former Pakohu 2B2AJ block is concerned, there are no orders required of the Chief Judge or me, and the finalisation of that partition will simply need to await the completion of the above steps. In the meantime, Deputy Chief Judge Fox can decide whether a rehearing of the 9 December 2013 hearing is required.

[139] As far as the issue of a LINZ title for Parengarenga B3 Residue and the determination of Lot 1 DP103374 to be Māori freehold land are concerned, I will issue the necessary directions and orders.

Outcome

[140] As I said at the outset of this decision, I am setting out my findings and proposed actions by way of a preliminary determination. Nevertheless, any directions and orders set out in [144] below will issue per this decision.

[141] I invite the PI, the MI, the owners associated with Ngatekawa and any other affected parties to provide comment on what I have set out in this decision. In particular, I am interested in comments on the revised methodologies, the steps I've set out for

addressing the problems, the incorporations' ability to undertake the further tasks required of them, and the overall coordination and timing of the exercise.

[142] Given the delay to date, and the fact that some of the key parties will have moved on to other activities that have taken them away from the subject matter of these proceedings, I imagine some time will be required in which to digest what I have set out. I therefore expect any comment to be provided by 30 June 2016. If necessary, I will convene a teleconference to discuss any issues that are raised.

[143] Given the complexity of the situation and the need for further liaising with the PI and MI, the Chief Judge and LINZ, I consider it necessary to appoint Mr Adam to assist the case manager with ensuring that the remedial steps are followed correctly. Mr Adam has recent experience of a so-called "de-amalgamation" of land in relation to the Te Horo 2B2B2B Residue amalgamated title situated around Pipiwai, and is well qualified to assist the Court and the incorporations.

[144] I direct and order as follows:

(1) The case manager is to immediately distribute this decision to the affected parties for comment by them by 30 June 2016;

(2) The Registrar is to prepare the amended s 45 application and draft report to the Chief Judge by 30 June 2016;

(3) Pursuant to ss 40, 69 and 98 of the 1993 Act I appoint Bob Adam of Whangarei to review the steps required to be carried out as a result of this decision and any subsequent decision in these proceedings;

(4) Pursuant to ss 37(3), 69 and 98 of the 1993 Act I direct the Registrar to engage a surveyor to complete a compiled survey plan for Parengarenga B3 Residue as at 4 November 1998 to enable the title order to be registered;

(5) Once the survey plan for Parengarenga B3 Residue is completed, the Registrar is to forthwith arrange for the registration with LINZ of the

combined 4 November 1998 and 25 January 1999 title order in the name of the PI;

(6) Pursuant to ss 37(3) and 131 of the 1993 Act I make an order determining Lot 1 DP103374 (CFR NA56D/1466) to be Māori freehold land.

Dated at Whangarei this 6th day of August 2016.

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Judge D J Ambler